

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

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IN THE MATTER OF THE PETITION	:	FINDINGS OF FACTS AND
OF THE DIVISION OF OIL, GAS AND	:	CONCLUSIONS OF LAW
MINING FOR AN ORDER REQUIRING	:	AND ORDER
CESSATION OF MINING, RECLAMATION	:	
AND POSTING OF SURETY, PAGANO	:	DOCKET NO. 93-004
CLAY ESTATE, HAROLD MARSTON	:	CAUSE NO. M/015/062
PERSONAL REPRESENTATIVE AND	:	
OPERATOR, PAGANO CLAY PROJECT,	:	
EMERY COUNTY, UTAH	:	

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Pursuant to the petition of the Division of Oil, Gas and Mining ("Division"), this cause came before the Board of Oil, Gas and Mining ("Board"), Department of Natural Resources, on Wednesday, February 24, 1993, commencing at the hour of 10:00 a.m. in the boardroom of the Division, 3 Triad Center, Suite 520, 355 West North Temple, Salt Lake City, Utah.

At the hearing of February 24, 1993, argument of the parties was heard. The following Board members were present at the hearing:

James W. Carter, Chairman
Raymond Murray
Judy F. Lever
E. Steele McIntyre
Jay Christensen
Kent Stringham
Dave D. Lauriski recused himself from this hearing.

The Division was represented by Thomas A. Mitchell, Esq., Assistant Attorney General for the State of Utah.

Appearance for the Division was made by Holland Shepherd, Senior Reclamation Specialist.

Harold Marston, personal representative of the Jay Pagano Estate and operator of the Pagano Clay Project, was represented by Thomas Bachtell, Esq.

NOW THEREFORE, the Board, having taken evidence and testimony in this matter and also having taken into consideration the stipulation between the Division and the operator of the Pagano Clay Project, now makes and enters the following:

FINDINGS OF FACT

1. Due and regular notice of the time, place and purpose of the February 24, 1993, hearing was given to all interested parties as required by law and the rules and regulations of the Board.

2. The Board has jurisdiction over this matter and over all the parties interested therein pursuant to Utah Code Ann. § 40-8-6 (1953, as amended) . The Board also has jurisdiction to make and promulgate the Order hereinafter set forth pursuant to Utah Code Ann. § 40-8-8 (1975, as amended).

3. On May 5, 1992, the Division received from Mr. Harold Marston, as personal representative of the Jay Pagano Estate, a Notice of Intention to Commence Small Mining Operations for the Pagano Clay Project. On June 8, 1992, the Division sent a completeness letter to Mr. Marston. The letter informed Mr. Marston that a Large Mine Operation ("LMO") permit application would need to be filed with the Division before the mining operation exceeded five (5) acres of surface disturbance.

4. On August 28, 1992, the Division received a copy of a Notification of Trespass on State Lands. The notice was issued to Mr. Harold Marston, representative of the Jay Pagano Estate. The notice was issued by State Lands and Forestry. The notice discussed the lack of formal application and approval for a road crossing state land leading to a clay mining operation.

5. On September 3, 1992, Holland Shepherd, Senior Reclamation Specialist, inspected the Pagano Clay Project site. His inspection concluded that the mine site disturbance was significantly larger than the five acre Small Mine Operation limit.

6. On September 9, 1992, the Bureau of Land Management issued a notice of trespass to East Carbon Constructors for unauthorized road work conducted on a county road crossing BLM ground between highway 6/50 and the Jay Pagano Operation. The road was upgraded to haul clay from the mine. The upgrade, or widening of the road, was performed without approval from the BLM.

7. On September 11, 1992, a Notice of Non-Compliance ("NON") was hand delivered to Mr. Harold Marston, during a meeting at the Division's Salt Lake City offices. The NON gave Mr. Marston until October 15, 1992, to submit a LMO permit application and reclamation surety to the Division for the site. State Lands and Forestry, the Division of Water Rights and the Army Corp. of Engineers were notified via the NON.

8. On October 1, 1992, Holland Shepherd spoke with Mr. Marston over the phone. Mr. Marston indicated that he had already started to reclaim the site and that he did not intend to submit a LMO permit application or post a reclamation surety.

9. On October 6, 1992, the Division hand delivered another letter to Mr. Marston reiterating the permitting and surety requirements of the NON.

10. On October 9, 1992, Holland Shepherd conducted a follow-up inspection of the Pagano Clay Operation. The surface disturbance was estimated at approximately seventeen (17) acres, and a \$23,300 reclamation surety was subsequently calculated for reclamation of the mine site. A copy of the inspection report and reclamation estimate was sent to Mr. Marston.

11. On October 15, 1992, the Division received a telefaxed message from Mr. Marston, requesting an extension of time to meet State permitting requirements.

12. On October 22, 1992, the Division mailed Mr. Marston a certified letter, granting him an extension of the deadline to respond until December 18, 1992. Also as requested, the conditions for abatement of the NON were revised to require a detailed reclamation plan in lieu of a complete LMO application. The Division also agreed to re-evaluate the \$23,300 reclamation surety estimate to reflect the recent regrading work performed on the mining site.

13. On November 10, 1992, Division staff met with Mr. Marston at the Division to discuss a resolution to the non-

compliance situation at the Pagano Clay Project.

14. On November 13, 1992, the Division sent Mr. Marston a certified letter summarizing the agreements reached during the November 10th meeting. The agreement required the operator to submit a reduced reclamation surety of \$3,700 to cover seeding, mulching and fertilization costs. This agreement was conditioned on the completion of all reclamation by December 18, 1992.

15. On December 2, 1992, Holland Shepherd again inspected the mine site. Regrading and contouring work had been performed, except for a section of the access road in the southwest portion of the site, covering approximately two (2) acres. Seed, mulch and fertilizer application was to be applied by the end of the week.

16. On December 8, 1992, another letter was mailed to Mr. Marston reminding him of the pending December 18, 1992, deadline.

17. The December 18th deadline passed and the operator failed to satisfy the Division's requirements. The Division received no formal notification or explanation from the operator. Instead, the Division only received a verbal commitment from the operator that the required surety would be provided and the reclamation/revegetation work would be performed.

18. The Division continued to make contact with the operator beyond the December 18th deadline. Division staff spoke to Mr. Hank Regulski and Mr. Harold Marston, on January 8th and 15th regarding the posting of surety and the formal submittal of information.

19. On January 22, 1993, the Division filed a Notice of Agency Action, in which it petitioned the Board for an order directing the Pagano Clay Project operator to cease all mining operations and sought relief as follows:

a. That the Board issue an Order requiring the operator to complete the reclamation of the site by June 1, 1993.

b. That the Board issue an Order requiring the operator to immediately submit the required reclamation plan and full surety to the Division.

c. That the Board issue an Order, pursuant to Utah Code Ann. § 40-8-9(1)(a), which finds that Mr. Harold Marston as operator is in non-compliance and that he has acted knowingly and willfully in violating provisions of the Utah Mined Land Reclamation Act, Utah Code Ann. § 40-8-1 et seq. (1953, as amended) and the rules promulgated pursuant to statute.

20. On February 24, 1993, Mr. Harold Marston, as personal representative and operator of the Pagano Clay Project, stipulated for the purposes of this hearing, with one exception, to the truth of the contents contained in the Division's January 22, 1993, Notice of Agency Action. Mr. Marston did not stipulate that he acted knowingly and willfully in violating the provisions of the Utah Mined Land Reclamation Act, Utah Code Ann. § 40-8-1 et seq. (1953, as amended).

CONCLUSIONS OF LAW

1. The Board concludes that the Pagano Clay Project operator is in non-compliance with the Utah Mined Land

Reclamation Act for failing to permit the Pagano Clay Operation according to the requirements of Utah Code Ann. § 40-8-1 et seq. (1953, as amended) and Utah Admin. R. 647-4-101 and R. 647-4-113, which require an operator to file a Notice of Intention to commence Large Mine Operations and post reclamation surety with the Division prior to commencement of a Large Mining Operation.

2. The Board concludes that during mining operations, the operator of the Pagano Clay Project failed to maintain the mine site in an environmentally safe and stable condition as required by Utah Code Ann. § 40-8-2 (1975, as amended) and Utah Admin. R. 647-4-107.

Evidence now being available and considered by the Board upon which to reach its decision, the Board issues the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. The operator of the Pagano Clay Project, located in Emery County, Utah, shall immediately cease all mining operations.

2. The Pagano Clay Project operator shall immediately submit the required reclamation plan and full surety to the Division.

3. The operator shall complete the reclamation of the site by June 1, 1993.

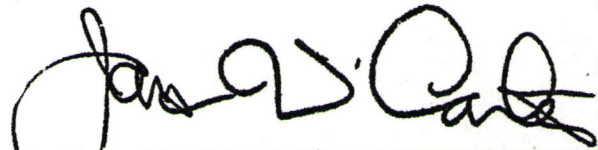
4. The Board finds there is not sufficient evidence in the record to support a finding that Mr. Harold Marston, as operator of the Pagano Clay Project, acted knowingly and willfully in

violating provisions of Utah Mined Reclamation Act, Utah Code Ann. § 40-8-1 et seq (1953, as amended), and the Rules promulgated pursuant to the statute.

5. The Board retains exclusive continuing jurisdiction over all matters covered by this Order and over all the parties affected thereby, and particularly reserves exclusive and continuing jurisdiction to make further orders as appropriate and as authorized by statute and regulation.

Issued and Signed this 8th day of March, 1993.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING



James W. Carter
Chairman

Approved as to form:



Thomas W. Bachtell
Attorney for Harold Marston